



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2012-N043]

[FF08E00000-FXES11120800000F2-123-F2]

Draft Environmental Assessment and Proposed Habitat Conservation Plan for the San Diego Unified School District's Jonas Salk Elementary School Project in the City of San Diego, San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) for the proposed Jonas Salk Elementary School Project in response to an application from the San Diego Unified School District (District or applicant) for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of one federally listed animal, the San Diego fairy

shrimp (*Branchinecta sandiegonensis*). The applicant would implement a conservation program to mitigate the project impacts, as described in the applicant's habitat conservation plan (plan). We request data, comments, and new information or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the applicant's permit application, plan, and the associated EA.

DATES: To ensure consideration, please send your written comments by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Please send your comments or requests for more information by any one of the following methods.

E-mail: FW8cfwocomments@fws.gov. Include “Jonas Salk Elementary School” in the subject line of the message.

Fax: Attn: Jim Bartel, Field Supervisor, (760) 431-5902.

U.S. Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, at the address shown above or at (760) 431-9440 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: We, the Service, publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Act). We have prepared this EA to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting proposed plan.

The applicant has submitted a habitat conservation plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The plan includes measures to minimize and mitigate the impacts, to the maximum extent practicable, of the proposed taking of a federally listed species to be covered by the plan, the San Diego fairy shrimp, and the habitat upon which it depends, resulting from construction of the proposed Jonas Salk Elementary School Project in the City of San Diego (City), San Diego County, California.

Background Information

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as

significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks incidental take authorization for the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*), which is the only proposed covered species in the plan.

The proposed covered activities under this plan include: (1) construction of an elementary school, park, and joint-use facilities on the 13.1-acre project site; and (2) restoration and enhancement of vernal pools occupied by San Diego fairy shrimp on the McAuliffe Park and Carroll Canyon Mitigation Sites owned by the City (collectively referred to as the Mitigation Sites). These three sites are located within the Mira Mesa Community in the north-central portion of the City.

The project site is bound by residences on the north, east, and southeast; Rattlesnake Canyon on the south and southwest; and Maddox Park on the west. The project site has been identified as a potential school site on the Mira Mesa Community Land Use Plan Map and “Recommended School Facilities” Map since 1992. The District has determined that this site would provide the best location for a new elementary school to alleviate school overcrowding in the Mira Mesa attendance area.

The McAuliffe Park Mitigation Site is approximately 0.3 mile to the north of the project site and is bound by residences on the east, Challenger Middle School on the north, and Lopez Canyon on the west and south. The McAuliffe Park Mitigation Site is fenced along the interface with the residences and school and owned by the City. The District and City have entered into a Memorandum of Understanding (MOU) that allows the District to use the McAuliffe Park Mitigation Site in exchange for additional park land and public facilities at the project site. Under the MOU, ownership of the McAuliffe Park Site would be transferred from the City to the District.

The Carroll Canyon Mitigation Site is approximately 0.5 mile to the south of the project site and is within the larger 19.1-acre Carroll Canyon Preserve. The site is bound by residences on the north, the Carroll Canyon Preserve on the east and south, and aggregate mining operations on the west. The entire Carroll Canyon Preserve, including the mitigation site, is fenced and owned by the City.

The District and City are negotiating on a Right of Entry Permit that allows the District to use the Carroll Canyon Mitigation Site. At this time, the Carroll Canyon Mitigation Site appears to be a viable mitigation option for the District. If the District is unable to negotiate a Right of Entry Permit with the City for use of the Carroll Canyon Mitigation Site, the District would be required to pursue other options acceptable to and approved by the Service.

The District proposes to develop the Jonas Salk Elementary School, park, and joint use facilities on the project site. The park and joint-use facilities would be constructed, owned, and maintained by the City in accordance with the MOU.

The proposed project would permanently remove all San Diego fairy shrimp and its vernal pool habitat from the project site. To mitigate impacts to the San Diego fairy shrimp and its vernal pool habitat, the applicant would preserve, restore, enhance, monitor, and manage vernal pool habitat for the San Diego fairy shrimp on the Mitigation Sites.

Alternatives in the Draft Environmental Assessment

The impacts of the proposed action are compared to the no-action alternative and to the impacts of a reduced vernal pool impact alternative in the draft EA

Proposed Alternative

The Proposed Alternative, the proposed HCP, would encompass a site area of 13.1 acres. This alternative would allow: (1) construction of an elementary school that is in compliance with all applicable California Department of Education School Development Guidelines (guidelines); (2) construction of a park and public facilities according to an MOU between the District and City; and (3) the restoration,

enhancement, preservation, and/or management of San Diego fairy shrimp habitat at the Mitigation Sites. The HCP's overall conservation strategy for the San Diego fairy shrimp is to allow impacts to degraded vernal pools with low long-term conservation value at the project site in exchange for conservation of higher quality vernal pools at the mitigation sites in perpetuity to aid the recovery of the species.

The Proposed Alternative would result in permanent impacts to all 1.66 acres of San Diego fairy shrimp vernal pool habitat (i.e., all 99 pools) on the project site. The applicant proposes to mitigate impacts to San Diego fairy shrimp and its vernal pool habitat at a 2:1 ratio by restoration, enhancement, and preservation of 3.32 acres of vernal pools: a total of 2.62 acres would occur at the McAuliffe Park Mitigation Site, and 0.7 acre would occur at the Carroll Canyon Mitigation Site. All restored pools would be occupied by the San Diego fairy shrimp. The applicant would record a perpetual biological conservation easement over, and implement a perpetual management and monitoring plan for, the Mitigation Sites.

Under the Proposed Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. These activities are described in detail in the plan.

Reduced Vernal Pool Impact Alternative

Under the Reduced Vernal Pool Impact Alternative, the project would avoid and minimize impacts to the San Diego fairy shrimp and its vernal pool habitat by reducing the site area to 8.83 acres. This alternative would not comply with state guidelines for school site area, turf fields, or hardcourt play area, and only minimally comply with the guidelines for classrooms, support facilities, site circulation, and fire access.

The Reduced Vernal Pool Impact Alternative would result in permanent impacts to 0.72 acre of San Diego fairy shrimp vernal pool habitat on the project site. The applicant would mitigate impacts to San Diego fairy shrimp and its vernal pool habitat at a 2:1 ratio by enhancing and preserving 0.94 acre of vernal pools on the project site and restoring 0.5 acre of vernal pools on the project site and/or at the McAuliffe Park Mitigation Site. All restored pools would be occupied by the San Diego fairy shrimp. The applicant would record a perpetual biological conservation easement over, and implement a perpetual management and monitoring plan for, the project site and/or McAuliffe Park Mitigation Site. While this alternative would avoid some of the San Diego fairy shrimp habitat onsite, the avoided habitat would be surrounded by the adjoining school and park and have a minimal connection with natural open space. Therefore, the avoided habitat would be subject to fragmentation and indirect impacts that would limit the long-term viability of the San Diego fairy shrimp population onsite.

The Reduced Vernal Pool Impact Alternative would also require issuance of an incidental take permit.

No Action Alternative

Under the No Action alternative, we would not issue a permit, and the applicant would not construct the project. The no-action alternative would not achieve the applicant's objectives and would not allow the development of the project on a District property that is identified as a potential school site on the Mira Mesa Community Land Use Plan Map and "Recommended School Facilities" Map. Under the No Action Alternative, the project site would continue to be subject to impacts from pedestrian, pet and bicycle traffic, which may eventually lead to the extirpation of San Diego fairy shrimp at the site. In addition, no mitigation lands would be restored, enhanced, monitored and managed for the permanent conservation of San Diego fairy shrimp under the no-action alternative.

Environmental Review and Next Steps

As described in our EA, we have made the preliminary determination that approval of the proposed plan and issuance of the permit will not result in any significant impacts to the environment and warrants a Finding of No Significant Impact (FONSI) under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and

516 DM 8). Our EA articulates the project's effects on all potential resources that could be adversely affected, including vegetation, wildlife, threatened or endangered species, wetlands, geology and soils, land use, air quality, water resources and water quality, cultural resources, paleontological resources, and traffic and transportation. It also includes an analysis of alternatives and cumulative effects.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the plan and the draft EA. We particularly seek comments on any environmental issues of concern to the public that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the ADDRESSES section.

We will consider public comments on the draft EA when making the final determination on whether to prepare additional NEPA documents on the proposed action and in making a decision whether to issue an incidental take permit.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Availability of Documents

You may obtain copies of the permit application, plan, and EA from the individuals in FOR FURTHER INFORMATION CONTACT. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office (see ADDRESSES). Documents are also available at the following City Libraries: (1) Mira Mesa Library, 8405 New Salem Street, 92126; (2) Scripps Ranch Library, 10301 Scripps Lake Drive, 92131; (3) Rancho Penasquitos Library, 13330 Salmon River Road, 92129; and (4) North University Community Branch Library 8820 Judicial Drive, 92122.

Authority

We provide this notice pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the San Diego fairy shrimp from the implementation of the covered activities described in the plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Alexandra Pitts
Deputy Regional Director,
Pacific Southwest Region,
U.S. Fish and Wildlife Service,
Sacramento, California.

[FR Doc. 2012-17962 Filed 07/23/2012 at 8:45 am; Publication Date: 07/24/2012]